IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 249 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GORDHANBHAI V PATEL

Versus

MAHESANA DISTRICT CO-OP. MILK PRODUCERS' UNION LTD

Appearance:

M/S NJ MEHTA ASSO. for Petitioner

MR RAJNI H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision : 22/6/2001

ORAL JUDGEMENT

The petitioner, who is an employee of respondent-Dairy raised an industrial dispute which was referred to Industrial Tribunal and the same was numbered as Ref.(IT)57/85. Being aggrieved by the judgement and award in this reference rendered on 14th March, 1988, the

petitioner has approached this Court seeking the following reliefs :

"10(B) quashing and setting aside the award at Annexure 'A' and directing the respondents to treat the petitioner as having been promoted with effect from 1-8-1969, and directing them to pay arrears of wages on that basis;

(C) declaring that the petitioner was entitled to be promoted to the post of Assistant Dairy Superintendent, presently redesignated as Shift Superintendent with retrospective effect from 1-8-1969, and directing the respondent-Dairy to treat petitioner as being so promoted and further directing this to give arrears of wages on that basis;

2. We have heard Mr.Shalin Mehta for the petitioner and Mr.Rajni Mehta for the respondent. On behalf of the petitioner it was submitted that the petitioner was employed on 1st March, 1965 and he was granted promotion on 6th November, 1967. It appears that on 6th March, 1972, the petitioner was further promoted but he declined to accept the promotion. Thereafter, on 3rd October, 1974, the petitioner was once again promoted and transferred as Officer in-charge, Vihar Chilling Centre, Vihar. The petitioner once again refused to accept the promotion and did not report at Vihar Chilling Centre. The respondent-Dairy, therefore, terminated services of the petitioner w.e.f. 10/10/1974.

3. The aforesaid order of termination was challenged and a reference before the Labour Court, Ahmedabad being Ref.L.C.A. No.861 of 1978 was made. The Labour Court allowed the reference on 11th January, 1982 directing the respondent-Dairy to reinstate the petitioner with full backwages. It appears that the respondent-Dairy approached this Court by way of Spl. Civil Application No.4865 of 1982 against the judgement and award of the Labour Court and the said petition was summarily rejected by this Court vide order dated 1st December, 1982.

4. After the Industrial Tribunal gave its judgement and award dated 14th March, 1988 (Annexure 'A'), the respondent-Dairy offered promotion to the petitioner vide its communication dated 26th August, 1988. There was an exchange of correspondence between the petitioner and the respondent-Dairy and ultimately on 26th September, 1988,

the petitioner was ordered to be promoted w.e.f. 11th February, 1983.

5. On behalf of the petitioner, a grievance is made to the effect that he was entitled to be promoted w.e.f. 1st August, 1969 and the order promoting him w.e.f. 11th February, 1983 is bad in law as the same is in pursuance of the judgement and award of Industrial Tribunal.

6. At the time of hearing, Mr.Shalin Mehta addressed the Court principally to the effect that though the petitioner was claiming that he was entitled to be promoted on 1st August, 1989, at least the period i.e. from 1974 to 1982 should be taken into consideration by the Respondent while taking a decision as regards the eligibility of the petitioner to be promoted. Elaborating on this submission, it was contended that the petitioner having been reinstated with full backwages, it was not open to the Industrial Tribunal to ignore the said period and the respondent-Dairy had ignored the said period while promoting the petitioner in view of the judgment and award of the Industrial Tribunal.

7. The Industrial Tribunal in the impugned judgment and award has found the following facts :

(i) The petitioner had refused to accept promotion which he was granted in 1972.

(ii) The petitioner again refused promotion in 1974.

(iii) Four persons who were said to be juniors to the petitioner were, in fact, never junior to the petitioner.

(iv) No one had been promoted between the period, the petitioner was terminated from service and reinstated and;

(v) There is no evidence on record to show that the management had ignored the seniority at the time of promotion.

8. In light of these findings of fact, the Industrial Tribunal ordered that the petitioner was not entitled to any promotion during the period between 1974 to 1982. However, in view of the fact that the petitioner was ready and willing to accept promotion when the matter was heard before the Industrial Tribunal. The Tribunal expressed a hope that the respondent-Dairy would forget the past incidents and grant promotion to the

petitioner. It was in this context that the petitioner had been granted promotion as stated hereinbefore.

9. Mr.Shalin Mehta on behalf of the petitioner vehemently contended that once the Labour Court had reinstated the petitioner with full backwages, as a natural corollary, the petitioner was entitled be considered for promotion and for this purpose period of eight years i.e. 1974 to 1982 could not be ignored. As can be seen from the facts found by the Tribunal, there is no question of ignoring the said period for the purpose of promotion because, firstly, insofar as the petitioner was entitled to be promoted on 1974, the respondent-Dairy had already ordered his promotion alongwith transfer but it was the petitioner who had refused to accept the said promotion. Therefore, the entitlement of the petitioner for promotion at the relevant point of time stood exhausted and in spite of reinstatement the petitioner cannot be permitted to say that the offer which had been made and not accepted should be revived. Secondly, even otherwise as nobody had been promoted during the said period, there is no question of the rights of the petitioner being ignored. In fact, as no one else had been promoted, it was not open to the petitioner to claim that he should be entitled to be considered for promotion during the said period.

10. Mr.Mehta relied upon the Supreme Court decision in the case of Workmen of M/s. Williamson Magor and Co. Ltd. Vs. M/s. Williamson Magor and Co. Ltd., AIR 1982 SC 78. However, we find that the said decision is not applicable on the facts of the present case and moreover, even applying the ratio of the said decision, it cannot be said that there is any infirmity in the judgment and award of the Tribunal.

11. In view of the aforesaid fact and circumstances of the case, we find no substance in the petition. Rule discharged with no order as to costs.

(D.A.Mehta, J)

'Bhavesh'